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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Ryan Cox, individually and on behalf of all
others similarly situated,

Plaintiff,

vs.

CoinMarketCap OpCo, LLC, Binance
Capital Management Co., Ltd. d/b/a Binance
and Binance.com, BAM Trading Services
Inc. d/b/a Binance.US, Changpeng Zhao,
Catherine Coley, Yi He, Ted Lin, and Does
I-X;

Defendants.

Case No.: 3:21-cv-08197-SMB

**PLAINTIFFS' MOTION FOR
RECONSIDERATION OF MINUTE
ENTRY ORDER TERMINATING
DEFENDANTS BINANCE AND
COINMARKETCAP FOR NON-
SERVICE**

Plaintiff, Ryan Cox *et al.*, by and through his attorneys, Arno Naeckel and the
Davillier Law Group LLC, moves this Honorable Court to reconsider its minute order

1 of December 16, 2021, Docket Entry #34, terminating defendants Binance Capital
2 Management Co., Ltd. (“Binance”) and CoinMarketCap OpCo LLC
3 (“CoinMarketCap”) for nonservice pursuant to the Court’s order of September 16, 2021
4 and Fed. R. Civ. P. 4(m), based upon the argument below:

6 **FACTS**

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8 On October 13, 2021, CoinMarketCap OpCo, LLC was served by Plaintiffs
9 pursuant to Fed. R. Civ. P. 4 by service upon Corporation Service Company, designated
10 by law to accept service of process on their behalf. Exhibit A, *Proof of Service –*
11 *CoinMarketCap OpCo, LLC.*

12
13 On November 3, 2021, Binance was served by Plaintiffs pursuant to Fed. R. Civ.
14 P. 4 by by service upon ICS Corporate Services (BVI) Limited, designated by law to
15 accept service of process on their behalf. Exhibit B, *Proof of Service – Binance Capital*
16 *Management Co., Ltd.*

17
18 On November 3, 2021, counsel for CoinMarketCap and Binance entered into a
19 joint stipulation with counsel for Defendant BAM Trading Services Inc. d/b/a Binance.US
20 and counsel for Plaintiffs as to the timing of the response to the Plaintiffs’ complaint by
21 these three defendants. [DE 16] pp. 2-3. This stipulation was signed by counsel for
22 Binance and CoinMarketCap OpCo LLC (as well as by counsel for Binance.US). Via this
23 joint stipulation, the parties further acknowledged that the only remaining unserved
24 defendants at that time were Changpeng Zhao, Catherine Coley, Yi He, and Ted Lin. *Id.*
25 1:8-10, 18-20. Pursuant to this stipulation, the Court entered an Order requiring
26 Defendants Binance and CoinMarketCap to respond to the Complaint within 60 days after
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1 service on the remaining unserved defendants was completed. [DE 17] 1:20-24. Because
2 of this joint stipulation and the resulting Order, Plaintiffs believed, apparently erroneously,
3 that filing proof of service was unnecessary for these defendants.
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5 **LEGAL STANDARD**

6 On motion or on its own, “The court may correct a clerical mistake or a mistake
7 arising from oversight or omission whenever one is found in a judgment, order, or other
8 part of the record.” Fed. R. Civ. P. 60(a). On motion, a court may relieve a party from a
9 final judgment or order for “mistake, inadvertence, surprise, or excusable neglect.” Fed.
10 R. Civ. P. 60(b)(1). A motion under this rule must be made “within a reasonable time”
11 and “no more than a year” after the entry of the order. Fed. R. Civ. P. 60(c)(1). Service
12 under Rule 4 is “a flexible rule that should be liberally construed so long as a party
13 receives sufficient notice of the complaint.” *Scott v. Sebelius*, 379 F. App'x 603, 604
14 (9th Cir. 2010) (internal citation omitted).
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18 **ARGUMENT**

19 Plaintiffs properly served defendants Binance and CoinMarketCap within the
20 period of time set by this Court for service. In recognition of the sufficiency of this
21 notice, both corporate entities that were terminated for non-service negotiated and
22 signed a joint stipulation by counsel, and therefore appeared in this action pursuant to
23 LRCiv 83.3(a). They were then ordered by the Court to respond to the Complaint.
24 Plaintiffs inadvertently failed to file the proofs of service pursuant to this Court’s Order,
25 but have approached the Court with proof within a reasonable time of the discovery of
26 their mistake—a few days. Plaintiffs therefore respectfully request that this Court
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1 reconsider its minute order of December 16, 2021, Docket Entry #34, and readmit
2 defendants Binance and CoinMarketCap to the case so that litigation may proceed in the
3 interest of justice.
4

5
6 Respectfully submitted this 20th day of December, 2021.
7

8
9 /s/ Arno Naeckel
10 Arno Naeckel
11 DAVILLIER LAW GROUP, LLC
12 3443 N. Central Ave. Ste 1009
13 Phoenix, AZ 85012
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CERTIFICATE OF COMPLIANCE

I hereby certify that this Motion, which is 4 pages, does not exceed the page limit set forth by LRCiv 7.2(e)(1) of 17 pages.

Dated this 20th day of December, 2021.

/s/ Arno Naeckel

Arno Naeckel

DAVILLIER LAW GROUP, LLC

3443 N. Central Ave. Ste 1009

Phoenix, AZ 85012

CERTIFICATE OF SERVICE

I hereby certify that on December 20th, 2021, I electronically submitted the foregoing document to the Clerk's Office using the CM/ECF system for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

Dated this 20th day of December, 2021.

/s/ Arno Naeckel

Arno Naeckel
DAVILLIER LAW GROUP, LLC
3443 N. Central Ave. Ste 1009
Phoenix, AZ 85012

EXHIBIT A

Proof of Service – CoinMarketCap OpCo, LLC

Civil Action No. 3:21-cv-08197-SMB

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* CoinMarketCap OpCo, LLC
 was received by me on *(date)* 10/12/2021 .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☒ I served the summons on *(name of individual)* CORPORATION SERVICE COMPANY, who is
 designated by law to accept service of process on behalf of *(name of organization)* CoinMarketCap OpCo, LLC
 _____ on *(date)* 10/13/2021 ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ 200 for services, for a total of \$ 200 .

I declare under penalty of perjury that this information is true.

Date: 10/14/2021

christina song

Server's signature

Christina Song, Private Process Server

Printed name and title

101 Poplar St
 Philadelphia, PA 19123

Server's address

Additional information regarding attempted service, etc:

Wed 10/13/2021 03:08 PM at 251 Little Falls Dr Wilmington, DE 19808: I delivered the documents to CORPORATION SERVICE COMPANY, REGISTERED AGENT with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a black-haired black male contact 5'8"-5'10" tall and weighing 160-180 lbs.

EXHIBIT B

Proof of Service – Binance Capital Management Co., Ltd.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Arizona



Ryan Cox, individually and on behalf of all other
similarly situated individuals

Plaintiff(s)

v.

CoinMarketCap OpCo, LLC; Binance Capital
Management Co., Ltd d/b/a Binance and Binance.com;
BAM Trading Services Inc. d/b/a Binance.US;
Changpeng Zhao; Catherine Coley; Yi He; Ted Lin

Defendant(s)

Civil Action No. 3:21-CV-08197-SMB

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Binance Capital Management d/b/a Binance and/or Binance.com

C/O Ms. Sarah Li
ICS Corporate Services (BVI) Limited
Sea Meadow House
PO Box 116
Road Town, Tortola VG1110
British Virgin Islands

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Alexander Kolodin (SBN 030826)
The Davillier Law Group, LLC
3443 N. Central Ave., Suite 1009
Phoenix AZ 85012
602-730-2985
Email: akolodin@davillierlawgroup.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 11/02/2021

Signature of



ISSUED ON 12:11 pm, Nov 02, 2021

s/ Debra D. Lucas, Clerk

ALICIA DAULS
CORPORATE MANAGER
3 NOVEMBER, 2021 9:44am

Civil Action No. 3:321-CV-08197-SMB

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

This summons for Binance Capital Management d/b/a Binance and/or Binance.com C/O Ms. Sarah Li ICS Corporate Services (BVI) Limited was received by me on November 2, 2021.

Documents: **Summons in a Civil Action Complaint**

Service Address: **PO Box 116 Road Town**

Tortola, BV VG1110

☐ I personally served the above documents on the individual at (address) on (date/time)

☐ I left the summons at the individual's residence or usual place of abode with Alicia Davis - Officer of the company/authorized to accept, a person of suitable age and discretion who resides there, on , and mailed a copy to the individual's last known address; or

☒ I served the summons to **Alicia Davis - Officer of the Company/Authorized to accept** , who is designated by law to accept service of process on behalf of **Binance Capital Management d/b/a Binance and/or Binance.com C/O Ms. Sarah Li ICS Corporate Services (BVI) Limited** on **November 3, 2021 9:14 AM**

☐ I returned the summons unexecuted because ; or

☐ other (specify):

My fees are \$.00 for travel and \$ 1,500.00 for services, for a total of \$ 1,500.00

I declare under penalty of perjury under the laws of the The State of California that this information is true.

Date: **November 3, 2021**

Dervin Stoutt

Server's signature

Additional information regarding attempted service, etc:

Dervin Stoutt

Printed name and title

REG # , County of

555 ANTON BLVD STE 150, COSTA MESA, CA 92626

Server's Address